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21261	7590	07/26/2007	EXAMINER	
ROBERT PLATT BELL REGISTERED PATENT ATTORNEY P.O. BOX 310 AURORA, NY 13026-0310			MEINECKE DIAZ, SUSANNA M	
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/086,733	CRUZ, BENJAMIN G.
	Examiner	Art Unit
	Susanna M. Diaz	3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 April 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

1. This final Office action is responsive to Applicant's amendment filed April 25, 2007.

Claims 1-30 have been amended.

Claims 1-30 are presented for examination.

2. The previously pending objection to the specification is withdrawn in response to Applicant's submission of a corrected abstract.

Response to Arguments

3. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments regarding the treatment of non-functional data are addressed in more detail in the art rejection below.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 5 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 5 and 20 have been amended to specify that locale data is derived from consumer contact data from individual consumer indicating individual consumer demand for a consumer desired general locale for an entertainment performance. While consumers expressly enter their location data or zip code of interest for a locale, the specification does not explain how locale data is derived *per se* from consumer contact data.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-30 recite both the terms "location" and "locale." Are the terms meant to be synonymous or are they different in scope?

Appropriate correction and/or clarification is required.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (US 2002/0178442 A1) in view of Official Notice.

Williams discloses a system for collecting expressions of individual consumer demand for attending entertainment performances and making the data available to users to support user decisions regarding entertainment performances, said system comprising:

[Claim 16] an electronic network for receiving consumer demand data from individual consumers comprising requests indicating an individual consumer's desire to attend one or more entertainment performances (Fig. 1; ¶¶ 7, 21-33, 38 – The audience votes on which television ending or plot direction they prefer to watch, i.e., attend as a television viewer);

a computer database for housing collected individual consumer requests for entertainment performances (Fig. 1; ¶¶ 7, 21-33, 38, 44 – Audience feedback is aggregated and provided to the directors and marketers, thereby implying the existence of a computer database);

a computer system, coupled to the computer database and the electronic network, for generating entertainment performance preference demand data compiled by aggregating individual consumer demand requests (Fig. 1; ¶¶ 7, 21-33, 38 – The audience votes on which television ending or plot direction they prefer to watch); and

a user computer for providing entertainment performance demand data from the computer database to users to support user decision for scheduling one or more of time, location, and content of entertainment performances based upon the consumer

demand to attend selected entertainment performances (Fig. 1; ¶¶ 7, 21-33, 38 – The content of a future episode is determined based on audience feedback. The director is made aware of the voting results. Additionally, the various recitations of “to support user decisions” is mere intended user. There are no active steps performed as part of the decision making process. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The claimed recitations of intended use neither result in a structural difference between the claimed invention and the prior art nor in a manipulative difference as compared to the prior art; therefore, the claimed invention is not deemed to be patentably distinct over the prior art);

[Claim 17] wherein said electronic network for receiving consumer demand data from individual consumers further comprises:

means for receiving locale data from individual consumers *indicating* individual consumer demand for a consumer desired general locale for an entertainment performance (Since regional subplots/spin-offs may be planned and the related story lines may be modified by regional viewers, as seen in ¶ 55, it is understood that the consumers must provide some information that somehow correlates to or indicates a general locale for the entertainment performance. Additionally, it should be noted that

the specific type of data received from the consumers (e.g., regarding a desired general locale for the performance) is non-functional descriptive material and is not functionally involved in the steps recited nor does it alter the recited structural elements. For example, this type of data is never used to perform any manipulative steps of the invention (such as scheduling the entertainment performance); therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106);

[Claim 18] wherein said user computer for displaying entertainment performance preference data from the computer database to users to support user decisions for scheduling one or more of time, location, and content of entertainment performances includes a display of consumer demand data including consumer desired general locale for an entertainment performance so as to support user decisions to present entertainment performances at optimal locales (¶¶ 7, 21-33, 38, 55 -- Since regional subplots/spin-offs may be planned and the related story lines may be modified by regional viewers, as seen in ¶ 55, it is understood that the consumers must provide some information that somehow correlates to or indicates a general locale for the entertainment performance. Additionally, it should be noted that the specific type of

data received from the consumers (e.g., regarding a desired general locale for the performance) is non-functional descriptive material and is not functionally involved in the steps recited nor does it alter the recited structural elements. For example, this type of data is never used to perform any manipulative steps of the invention (such as scheduling the entertainment performance); therefore, such differences do not effectively serve to patentably distinguish the claimed invention over the prior art. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106. Additionally, the various recitations of "to support user decisions" is mere intended user. There are no active steps performed as part of the decision making process. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The claimed recitations of intended use neither result in a structural difference between the claimed invention and the prior art.

nor in a manipulative difference as compared to the prior art; therefore, the claimed invention is not deemed to be patentably distinct over the prior art);

[Claim 20] wherein said electronic network for receiving consumer demand data from consumers further comprises:

means for receiving consumer contact data from consumers (¶¶ 44, 55 -- Since regional subplots/spin-offs may be planned and the related story lines may be modified by regional viewers, as seen in ¶ 55, it is understood that the consumers must provide some information that somehow correlates to or indicates a general locale for the entertainment performance); and

means for deriving, from consumer contact data, locale data from individual consumers indicating individual consumer demand for a consumer desired general locale for an entertainment performance (¶¶ 44, 55 -- Since regional subplots/spin-offs may be planned and the related story lines may be modified by regional viewers, as seen in ¶ 55, it is understood that the consumers must provide some information that somehow correlates to or indicates a general locale for the entertainment performance);

[Claim 21] means for receiving data through the electronic network from individual consumers from a supplementary survey to provide one or more of demographic, contact, opinion, lifestyle, and personal preference data (¶ 44 – Audience preferences, show/character popularity, audience buying-habits, and audience web-browsing habits are gleaned, i.e., opinion, lifestyle, and personal preference data are gathered through audience feedback gleaned from the website/portals. These different forms of feedback collection qualify as supplementary surveys);

[Claim 23] means for receiving, from an advertiser, specifications for consumer targeting (¶¶ 44-54 – Direct marketing campaigns may be implemented);
means for analyzing the consumer demographic data in the computer database to identify the individual consumers matching advertiser specifications (¶¶ 44-54 – Direct marketing campaigns may be implemented); and
means for sending over the electronic network marketing messages to the identified individual consumers (¶¶ 44-54 – Direct marketing campaigns may be implemented);

[Claim 24] means for sending over the electronic network, messages to individual consumers offering at least one of goods and services associated with at least one or more of an entertainment, performance, a performer(s), and parties to which an individual consumer has agreed to be solicited from (¶¶ 44-54 – Direct marketing campaigns and opt-in e-mail campaigns may be implemented);

[Claim 25] means for receiving, from individual consumers, consent data for use of consumer contact information (¶¶ 44-54 – Direct marketing campaigns and opt-in e-mail campaigns may be implemented. Opt-in programs require consent from the consumer); and

means for sending individual consumer contact information to users, if permitted by consent of an individual consumer (¶¶ 44-54 – Direct marketing campaigns and opt-in e-mail campaigns may be implemented. Opt-in programs require consent from the consumer).

As per claims 16 and 19, Williams does not expressly disclose that the user computer displays entertainment performance demand data; however, Williams discloses that the director is made aware of the voting results so that he/she can plan production of a future episode accordingly (¶¶ 7, 21-33, 38). Official Notice is taken that it was old and well-known in the art of communications at the time of Applicant's invention to present important information to a user via a display; such practice facilitates quick and convenient perusal and consideration of the data. Since Williams clearly conveys desired episode content information to the directors, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Williams to display the entertainment performance demand data via a user computer in order to facilitate quick and convenient perusal and consideration of future episode information (as voted upon by the audience) by the directors.

Further, regarding claim 19, the recitation of "to support user decisions" is mere intended use. There are no active steps performed as part of the decision making process. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The claimed recitations of intended use

neither result in a structural difference between the claimed invention and the prior art nor in a manipulative difference as compared to the prior art; therefore, the claimed invention is not deemed to be patentably distinct over the prior art.

As per claim 19, Williams analyzes and sorts individual consumer data in order to tally the results of audience voting (¶¶ 7, 21-33, 38); however, Williams does not expressly disclose the formatting of analyzed and sorted individual consumer data for display on the user computer. As discussed above, Official Notice is taken that it was old and well-known in the art of communications at the time of Applicant's invention to present important information to a user via a display; such practice facilitates quick and convenient perusal and consideration of the data. Since Williams clearly conveys desired episode content information to the directors, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Williams to format analyzed and sorted individual consumer data for display on the user computer in order to facilitate quick and convenient perusal and consideration of future episode information (as voted upon by the audience) by the directors.

Regarding claim 22, Williams does not expressly disclose means for storing, in the computer database, details of scheduled entertainment events; means for matching scheduled events to the entertainment requests of individual consumers; and means for sending messages over the electronic network to individual consumers that an entertainment performance requested by a corresponding consumer has been scheduled. However, Williams does target consumers with marketing related to specific

TV shows (¶¶ 45-55), including "prequel-mercials" (¶ 54). Since the consumers are the ones who vote on the ending or plot direction of certain episodes, it is clear that they have a vested interest in a TV series for which they vote. Additionally, Official Notice is taken that it was old and well-known in the art of broadcast television at the time of Applicant's invention to store in a computer database details of scheduled television events; this helps both broadcasters and viewers to more effectively follow a scheduled list of programming. Since Williams targets entertainment-related merchandise and programming information to a viewing audience, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Williams to include means for storing, in the computer database, details of scheduled entertainment events; means for matching scheduled events to the entertainment requests of individual consumers; and means for sending messages over the electronic network to individual consumers that an entertainment performance requested by a corresponding consumer has been scheduled in order to enhance Williams' ability to more effectively target TV programming to an interested audience while helping both broadcasters and viewers to more effectively follow a scheduled list of programming.

As per claim 26, Williams discloses means for providing one or more of consumer demand, demographic, contact, opinion, lifestyle, and personal preference data (¶ 44 – Audience preferences, show/character popularity, audience buying-habits, and audience web-browsing habits are gleaned, i.e., opinion, lifestyle, and personal preference data are gathered through audience feedback gleaned from the

website/portals), in aggregate form (¶ 44 – The audience as a whole can be analyzed) to advertisers/marketers for market analysis (¶¶ 44-54); however, Williams does not expressly disclose that this information is provided to the user computer user. As explained in the rejection of claims 16 and 19 above, since Williams clearly conveys desired episode content information to the directors, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Williams to display the entertainment performance demand data via a user computer in order to facilitate quick and convenient perusal and consideration of future episode information (as voted upon by the audience) by the directors. Similarly, the TV shows themselves and related merchandise may be marketed to the audience (¶¶ 46-54); therefore, it would behoove the directors and other people in charge of producing and marketing these TV shows to have direct insight into the audience-specific marketing aspects of the TV shows. Therefore, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Williams such that the claimed marketing-related information is provided to the user computer user in order to facilitate quick and convenient perusal and consideration of future episode and related marketing information (as voted upon by the audience) by the directors, production, and marketing staff, thereby improving the directors', production staff's, and marketing staff's ability to more effectively market their TV shows.

Regarding claim 27, Williams does not expressly utilize its gathered consumer data (i.e., one or more of contact information, geographic, demographic, contact,

opinion, lifestyle, and personal preference data, see ¶ 44) and its custom research data (e.g., direct marketing, see ¶ 52) to formulate targeted survey panels for the conducting of customer research projects on behalf of third parties; however, Williams acknowledges that prior art marketing techniques created focus groups to garner audience feedback through third parties (¶ 44). While Williams asserts her invention to be an improvement over the more expensive and time consuming prior art focus group techniques, such techniques were still commonly utilized at the time of Applicant's invention. Official Notice is taken that it was old and well-known in the art of feedback gathering at the time of Applicant's invention to utilize third-party run, targeted survey panels in order to gather feedback; such survey panels often promote more in-depth discussions among the members, thereby yielding more thoughtful and group-oriented feedback at times. Since Williams is concerned with marketing a TV show to an audience, including a regional audience in one embodiment (¶ 55), the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Williams to utilize its gathered consumer data (i.e., one or more of contact information, geographic, demographic, contact, opinion, lifestyle, and personal preference data, see ¶ 44) and its custom research data (e.g., direct marketing, see ¶ 52) to formulate targeted survey panels for the conducting of customer research projects on behalf of third parties in order to promote more in-depth discussions among the audience members, thereby yielding more thoughtful and group-oriented feedback at times.

As per claim 28, while Williams receives consumer data over the electronic network (Fig. 1; ¶¶ 7, 21-33, 38), Williams does not expressly disclose that its means for receiving consumer data further comprises an electronic voting form, sent to an individual consumer over the electronic network to allow individual consumers to vote over the electronic network using the electronic voting form presented to the consumer by activation of at least one of a hyperlink and menu selection incorporated into a plurality of web sites and media players. However, Official Notice is taken that it was old and well-known in the art of electronic voting at the time of Applicant's invention to provide voters with an electronic voting form that is accessed by activation of at least one of a hyperlink and menu selection incorporated into a plurality of web sites and media players. This practice facilitates convenient, quick, and relatively inexpensive access to voting forms from almost anywhere in the world. Since Williams encourages voting from its audience, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Williams such that its means for receiving consumer data further comprises an electronic voting form, sent to an individual consumer over the electronic network to allow individual consumers to vote over the electronic network using the electronic voting form presented to the consumer by activation of at least one of a hyperlink and menu selection incorporated into a plurality of web sites and media players in order to encourage participation from audience members in the voting process, by providing convenient, quick, and relatively inexpensive access to voting forms from almost anywhere in the world.

Regarding claim 29, Williams does not expressly disclose that the electronic network comprises digital media devices connected to wireless networks; however, Official Notice is taken that it was old and well-known in the art of communications at the time of Applicant's invention to receive feedback from a user via digital media devices connected to wireless networks. This enables users to conveniently convey feedback from more varied locations. Since Williams collects feedback from its audience, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Williams such that the electronic network comprises digital media devices connected to wireless networks in order to enable consumers to conveniently convey feedback from more varied locations, thereby encouraging participation from more consumers.

As per claim 30, Williams does not expressly disclose that the electronic network comprises any voice-enabled information input and access device. However, Official is taken that it was old and well-known in the art of communications at the time of Applicant's invention to receive feedback from a user via a voice-enabled information input and access device, such as a telephone or cellular phone. This enables users to conveniently utilize common communication devices that they likely have at their disposal and are comfortable with using. Since Williams collects feedback from its audience, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Williams such that the electronic network comprises any voice-enabled information input and access device in order to enable consumers to conveniently convey feedback utilizing common communication

devices that they likely have at their disposal and are comfortable with using, thereby encouraging participation from more consumers.

[Claims 1-15] Claims 1-15 recite limitations already addressed by the rejection of claims 16-30 above; therefore, the same rejection applies.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ruvolo (U.S. Patent No. 6,978,246) – Discloses a system for matching people who desire to participate in common activities at specified times and locations.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (571) 272-6733. The examiner can normally be reached on Monday-Friday, 8 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Susanna Diaz
Susanna M. Diaz
Primary Examiner
Art Unit 3694

July 23, 2007